

Section 8.03 Closing Protection Letter

Pursuant to Iowa Code section 16.93 and 265 IAC 9.22, the Division may issue Closing Protection Letters to persons to whom a Division Commitment and Certificate is to be issued. The letters may indemnify lenders and owners against loss of settlement funds caused by a Division Closer's theft of settlement funds and failure to comply with written closing instructions. Division Closers are required to complete the required Division forms. Division Participants and Independent Closers are eligible, at the sole discretion of the Division, to be granted Division Closer status.

Requirements for Division Closers

To qualify as a Division Closer, an Applicant must meet the following requirements:

1. Participants who apply must be in good standing with the Division.
2. Applicant shall constantly keep in force errors and omissions insurance in the amount of \$500,000.00 per claim and a \$1,000,000.00 aggregate annual limit. The policy shall be endorsed to include "Title Guaranty Division" as a certificate holder and must contain provisions such that the Division is immediately notified by the insurance carrier of any lapse in or termination of coverage. Independent Closers may additionally be required to maintain a surety and/or fidelity bond in an amount as deemed necessary by the Division.
3. Independent Closer applicants, including partners, officers, members, and employees, must consent to credit and criminal background investigations deemed necessary by the Division. The Independent Closer must fully cooperate with the Division to obtain consents and waivers as required to conduct such investigations. The Division maintains the right to conduct these investigations at its discretion.
4. Applicant must complete the Division Closer Application and be approved to issue Closing Protection Letters. Contact the Division for a copy of the application.
5. All requested information shall be provided with the application form. The Division may consider an application withdrawn if it does not contain all of the information required and the information is not submitted to the Division within 30 days after the Division requests the information. The application shall be accompanied by a fee to be set by the Division Board. The Division Director shall approve or deny the application within 90 days.
6. Applicant must attend one or more Division training sessions, as required by the Division.
7. Applicant, upon approval by the Division, must execute a Closing Protection Letter Indemnity Agreement in favor of the Division. See the form contained herein.

Division Escrow Accounts

Division Closers conducting Division Closings utilizing accounts through the interest on lawyers' trust account program (hereinafter referred to as "IOLTA") regulated by the Lawyer Trust Account Commission shall be subject to the Iowa Supreme Court's rules and regulations concerning the operation of trust accounts. The remainder of this discussion shall not apply to Division Closers utilizing IOLTA accounts for Division Closings.

When Division Closers receive and disburse proceeds for Division Closings using non-IOLTA accounts, a Division Escrow Account is used to make disbursements for closings for which the Division Closer is closing under protection of a Division Closing Protection Letter. When a closing takes place and money is deposited with a Division Closer to fund the transaction, payment of the proceeds to the seller, loan payoffs, recording fees, closing fees, Division

premiums, and other related charges are to be paid from the account.

1. Establishing a Division Escrow Account

Division Closers who operate non-IOLTA escrow accounts shall provide an Irrevocable Letter of Direction to Financial Institution addressed to the financial institution where the account is located. See the form contained herein. This letter will be directed to the financial institution at which the account is established, authorizing the bank to send the Division monthly bank statements and copies of any relevant account information, as solely determined by the Division. The Division may, for cause, terminate or suspend a Division Closer's authority to maintain the account at any time.

When a Division Escrow Account is established, the Division Closer must report the account number, the bank name and address, and the Division Closer's name and number to the Division. The Division Closer is responsible for the proper conduct, maintenance, and reconciliation of the account. Periodic audits and reconciliation of bank accounts will be conducted by the Division.

Disbursements may be made out of a Division Escrow Account only if deposits in amounts at least equal to the disbursement have first been made directly relating to the transaction disbursed against and if the deposits are in one of the following forms:

- a. Cash. The Division discourages dealing with cash. When a party to a real estate transaction deposits cash, the Division Closer must prepare a receipt, a copy of which is to remain with the file, containing the following information:
 - i) The name of the Division Closer's office.
 - ii) Their Division Member Number.
 - iii) The date and time the cash was received.
 - iv) The amount of money received.
 - v) The name, address, and telephone number of the person who paid the money.
- b. Wire transfers such that the funds are unconditionally received by the Division Closer's depository;
- c. Checks, drafts, negotiable orders of withdrawal, money orders, and any other item that has been finally paid before any disbursement;
- d. A depository check, including a certified check, governed by the provisions of the Federal Expedited Funds Availability Act, 12 USC Sec. 4001, et seq.; or
- e. Credit transfers through the Automated Clearing House (ACH) which have been deemed available by the depository institution receiving the credits. The credits must conform to the operating rules set forth by the National Clearing House Association (NACHA).

2. Division Escrow Account Expenses

In addition to the money collected to fund a Division Closing, the only money that should be deposited in the account is money intended to cover check charges or bank fees. Personal use of the Escrow Account is strictly forbidden. All activity, including bank service charges and check charges, must be recorded in the Division Closer's records of the account.

3. Reconciliation

- a. Monthly reconciliation of the Division Escrow Account is mandatory. Each month, the account must be reconciled with the bank statement. A Division Closer must immediately notify the Division on becoming aware of any problem with the account.
- b. Failure to maintain monthly reconciliations will result in loss of privilege to conduct Division Closings.

4. Escrow Funds and Title Indemnities

There are several reasons why funds are held in escrow after a closing. Completion of work, payment of taxes, and title indemnities are just a few of the reasons. Whenever funds are held in escrow after a closing, there must be a written escrow agreement detailing the reason the funds were held, the time period during which the funds are to be held, and the parties necessary to authorize disbursement of the funds. The Division has standard form agreements for most situations, and Division attorneys will be available to assist in drafting an agreement for any escrow involving special circumstances.

5. Recordkeeping Requirements

The records of a Division Escrow Account must be kept up to date at all times, so that they may be inspected by the Division. The Division reserves the right to audit this account at any time, and can be expected to do so under any of the following circumstances:

- a. If a check is returned for non-sufficient funds (NSF).
- b. When a Division Closer terminates his/her relationship with the Division.
- c. Whenever a Division Closer has not followed Division procedures.

Upon request, Division Closers must immediately submit account information, bank statements, receipts, checks, and other information upon request of the Division for review.

All records relating to this account must be kept for 10 years beyond the current year.

Procedures

1. Commitments

- a. A Commitment must be issued prior to a Division Closing.
- b. The Closing Protection Letter with the Gap Coverage Rider attached will be issued with the Commitments.
- c. The Gap Coverage Rider guarantees the time period from the Effective Date of the Commitment through the date and time the deed and/or mortgage to be guaranteed are recorded. The effective date on an unexpired Commitment may be updated at closing with a Pre-Closing Search Certification (PCS) or an alternative search method. Whatever search method is used, the search must include a thorough review of the property and the titleholders. A written record of the updated search must be preserved by the Field Issuer for examination by the Division.

2. Closing Procedures

- a. A Division Closer must use the Rapid Certificate Program.
- b. A Division Closer must maintain detailed records of the parties present at each closing, and specify where and when each closing is held.
- c. If no new recordings are disclosed in the last minute search and no adverse matters are discovered, the transaction is closed and funds disbursed. If new recordings or adverse matters are discovered, the Division Closer may proceed with the closing only after consultation with the Participating Attorney who examined the abstract and upon such terms and conditions as the Participating Attorney may require based on the relevant law, title standards, and Division rules and procedures.
- d. The mortgage and any other appropriate documents are immediately filed of record after closing.
- e. The Field Issuer who issued the Commitment must issue the final Certificate(s).

3. Lender Certificates

Division Closers must ensure that Lender Certificates are issued within 30 days after closing, unless the lender specifies a shorter time period, even though the abstract is not yet certified through the recording of the mortgage to be guaranteed, and releases and other curative documents are not yet filed of record. In order to comply with this requirement, Division Closers must use the Rapid Certificate Program to guarantee over newly paid mortgages or liens not yet released of record. The Division encourages updated abstract certification, post-closing search certification, or Form 901 (if applicable). However, it shall be up to the Field Issuer to determine whether abstracting, a lien search, or some other search method is performed to assure the deed, mortgage, and other curative documents have in fact been filed of record. If the Division Closer is not responsible for issuing the Title Guaranty Commitment and/or Certificate, the Division Closer shall cooperate with the issuing attorney, abstractor, or Division staff to ensure that a Certificate is timely issued. Independent Closers not responsible for issuing the Commitment or Certificate shall immediately contact the Division if a Certificate is not issued within 30 days.

4. Owner Certificates

Owner Certificates may be issued in the same manner as Lender Certificates described above. Owner Certificates may be issued from a purchase transaction and cannot be ordered in a refinance transaction.

5. Incorrect Certificates and Endorsements

A Certificate is considered to be issued when it is properly completed and delivered to the Guarantor with all Endorsements specifically required in the closing instructions, escrow agreement, or other documents.

Conflicts of Interest

A Division Closer shall not issue or cause to be issued a Division Commitment or Certificate nor close a transaction in which the Division Closer has a direct or indirect interest unless the Division provides written approval to do so.

A Division Closer who issues or causes to be issued a Division Commitment or Certificate and closes on land in which the Division Closer has a direct or indirect interest without first obtaining the approval of the Division shall, in addition to other rights and remedies of the Division, be liable to the Division for any loss or damage suffered by the Division under the Commitment or Certificate. In addition, the Division shall not be liable under the Commitment or Certificate to the Division Closer or anyone who succeeds to the Division Closer's interest in the land, including but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors. An "indirect interest" for purposes of this discussion includes, but is not limited to, an interest held by the Division Closer in a trust, estate, partnership, or corporation, and any interest held by the Division Closer's spouse, children, grandchildren, or parents in the land or in a trust, estate, partnership, or corporation. These requirements shall not apply to interests held by the Division Closer or his or her spouse, children, grandchildren, or parents in a representative capacity or in a publicly held corporation.

Audit Procedures

1. Office Audits

The Division may, with or without notice to a Division Closer, audit the Division Closer at the Division Closer's office. This audit may include, but need not be limited to, review of the Division Closer's escrow account records, preliminary and final opinions, Commitment and

Certificate issuance (when applicable), and copies of updated abstracts; audit of serialized forms; and verification of the Division Closer's compliance with Division rules and regulations, and any other instructions given by the Division.

2. *Division Escrow Account Audits*

- a. The Division may, with or without notice to a Division Closer, audit the Division Closer's escrow account. This provision shall not apply to Division Closers utilizing accounts regulated by the Lawyer Trust Account Commission.
- b. The Division may require an Independent Closer, at the Independent Closer's expense, to have an annual independent audit made of its escrow, settlement, closing and security deposit accounts, conducted by a certified public accountant approved by the Division, on a calendar year basis within ninety (90) days after the close of the previous calendar year. The Independent Closer shall provide a copy of the audit report to the Division within one hundred (100) days after the close of the previous calendar year. The Division may promulgate additional requirements setting forth the minimum threshold level at which an audit would be required, the standard of the audit, and the form of the audit report required.

3. *Remedies*

In addition to other rights and remedies of the Division, the remedies set forth in the claims section of the Division administrative rules shall apply to a Division Closer's violation.

Closing Procedures

1. *Underwriting Determinations*

The Division Closer will cooperate with all involved Participants and the Division staff to make underwriting determinations prior to or at closing. For purposes of this discussion, the term "underwriting determinations" includes, but is not limited to, guaranteeing public access; reviewing gap searches, possible judgments, survey matters (including encroachments), unreleased mortgages, or other liens; and resolving any other matters disclosed by the Commitment or other sources of title information. A Division Closer or Participant who causes or allows an erroneous underwriting determination to be made shall be liable to the Division for loss or damage that the Division may suffer as a result of the erroneous underwriting determination. A Division Closer or Participating Attorney shall make all underwriting determinations utilizing the following when issuing Division Commitments and Certificates:

- a. Applicable state and federal laws;
- b. Generally accepted and prudent title examination methods, such as the most recent edition of the Iowa Land Title Standards of the Iowa State Bar Association; and
- c. Procedures implemented by the Division and outlines in the various manuals and other materials provided by the Division.

Any underwriting determination about which there may be a bona fide difference of opinion among local attorneys and that is not specifically covered by manuals and materials provided by the Division shall be approved by Division legal staff.

2. *Title Documentation*

A Division Closer shall make arrangements to obtain all applicable title documentation, including but not limited to the following documents:

- a. CMAs (properly executed by all sellers and buyers, or by current titleholders);

- b. Name affidavits;
- c. Documents to be recorded; and
- d. Current payoff letters and corresponding payoff checks.

The Division Closer shall be liable to the Division for additional interest or late penalties or other loss or damage suffered by the Division resulting from the Division Closer's failure to obtain and competently act upon these documents in a timely manner.

3. Forms

A Division Closer may not alter any form supplied by the Division, or use a form supplied by another person or entity to bind the Division, or otherwise bind the Division to liability with a form, other writing, or representation not supplied or authorized by the Division.

4. Post-Closing

- a. Division Closers shall follow up and see that valid releases and satisfactions are filed for all liens paid at Division Closings, in accordance with the Rapid Certificate Program. See section 8.02 of this Article. The Division will pay the mortgage release filing fee when the Rapid Certificate Program is used by Division Closers. The Independent Closer shall immediately notify the Division if a release of mortgage or lien is not recorded within four months after the closing of the guaranteed mortgage or sale transaction and assist the Division in procuring a release of mortgage or lien.
- b. Division Closers shall take remedial action on any title defects discovered after the closing and obtain any curative documents necessary to clear title. Division Closers shall promptly respond to and assist the Division in clearing title defects.

5. Premiums

Division Closers must submit premium payments to the Division within 30 days of closing.

Renewal of Division Closer Status

The Division shall send out annual Renewal Applications to each Division Closer to confirm qualifying status. If the Renewal Application is not returned within the allowed time period, the Division Closer designation may be immediately terminated.

Forms

The Division Closer Application – Independent Closer, the Closing Protection Letter, the Gap Coverage Rider, the Closing Protection Letter Indemnity Agreement, and the Irrevocable Letter of Direction to Financial Institution are shown on the following pages.